CHANAKYA NATIONAL LAW UNIVERSITY

A Project On

DOCTRINE OF RES JUDICATA

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2nd year (4th sem)

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B.A.LL.B. (Hons)

ACKNOWLEDGEMENT

I am feeling highly elated to work on the case law **"Doctrine of Res Judicata"** under the guidance of my faculty of **Civil Procedure Code, Mr. B. R. N. Sharma**. I am very grateful to him for his exemplary guidance. I would like to enlighten my readers regarding this topic and I hope I have tried my best to pave the way for bringing more luminosity to this topic.

I also want to thank all of my friends, without whose cooperation this project was not possible. Apart from all these, I want to give special thanks to the librarian of my university who made every relevant materials regarding to my topic available to me at the time of my busy research work and gave me assistance. And at last I am very much obliged to the God who provided me the potential for the rigorous research work.

At finally yet importantly I would like to thank my parents for the financial support.

Thanking you

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C.N.L.U.

RESEARCH METHODOLOGY

Research Methodology

The project is basically based on the doctrinal method of research as no field work is done on this topic.

Aims & Objectives

To do an in depth analysis of the Concept of Res Judicata and the general rule assigned to that. The main objective of this project is to ascertain the meaning and importance of Doctrine of Res Judicata. Also, it is to ascertain that how much it is applicable in legal areas like Income Tax proceedings, public Interest Litigations, writ proceedings etc.

Sources of Data

The whole project is made with the use of secondary source. The following secondary sources of data have been used in the project-

1. Books
2. Websites

Mode of Citation

The researcher has followed a uniform mode of citation throughout the course of this research paper.

Type of Study

For this topic, the researcher has opted for Descriptive and Explanatory type of study as in this topic, the researcher is providing the descriptions of the existing facts.

CONTENTS

INTRODUCTION

'*Res*' in Latin means *thing* and '*Judicata*' means *already decided*. This rule operates as a bar to the trial of a subsequent suit on the same cause of action between the same parties. Its basic purpose is – "One suit and one decision is enough for any single dispute". The rule of *'res judicata'* does not depend upon the correctness or the incorrectness of the former decision.[1] It is a principle of law by which a matter which has been litigated cannot be relitigated between the same parties. This is known as the rule of *res judicata* (thing decided). The aim of this rule is to end litigation once a matter has been adjudicated. It aims to save the court time and prevent harassment to parties.

The term *res judicata* in common parlance refers to the various ways in a judgment in which one action will have a binding effect in another. In modern terminology, these binding effects are called "claim preclusion[2]". It must be distinguished from the second effect which is called "collateral estoppel" or "issue preclusion[3]". *Res judicata* is a broadterm "which encompasses both issue preclusion or claim preclusion". The effect of issue preclusion is that an issue determined in a first action may not be re-agitated when the same issue arises in a later action based on a different claim or demand.[4]

This doctrine is well found in the history of any legal society and thus can be taken as one of the well established doctrine. In India, this Doctrine is being incorporated in Sec 11 of The Civil Procedure Code. The essentials for application of this doctrine in any legal proceeding are being discussed in the subsequent chapters. Also, the doctrine of Res Judicata is applicable in other legal situations apart from general civil cases like Arbitration proceeding, Income Tax proceeding, Public Interest Litigation, etc.

This doctrine of Res Judicata is different from doctrine of Res Sub Judice as Res judicata is applied to bar a further suit on same subject matter between same parties whereas res sub-judice is applied only to stay the subsequent suit when there is a former pending suit on same subject matter.

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[1] AIR 1983 NOC 69 (All).
[2] Claim preclusion focuses on barring a suit from being brought again on a legal cause of action that has already been finally decided between the parties.
[3] Issue preclusion bars the re-litigation of factual issues that have already been necessarily determined by a judge or jury as part of an earlier claim.
[4] See 94 US 351 352-353, 24 Led. 195, 197-198 (1877) wherein the distinction between issue preclusion and claim preclusion has been formulated by Mr. Justice Field in *Crownwell v. County of Sac*.

HISTORY OF RES JUDICATA

"Res judicata pro veritate occipitur" is the full latin maxim which has, over the years, shrunk to mere "Res Judicata". The concept of Res Judicata finds its evolvement from the English Common Law system, being derived from the overriding concept of judicial economy, consistency, and finality. Under the Roman Law, a defendant could successfully contest a suit filed by a plaintiff on the plea of '*ex captio res judicata'*. It was said, as 'one suit and one decision is enough for any single dispute'.

The rule of Res Judicata has a very ancient history. It was well understood by Hindu lawyers and Mohammedan jurists. It was known to ancient Hindu Law as *Purva Nyaya* (Former Judgement). The plea has been illustrated in the text of Katyayan thus "If a person though at law sues again, he should be answered, you were defended formerly". Under the Roman law, a defendant would repeal the plaintiff's claim by means of *execeptio* res judicata or a plea of previous judgment. It was recognized that "One suit and one decision was enough for any single dispute" and that "a matter once brought to trial should not be tried accept, of course, by way of appeal".

Julian defined the principle thus "And generally the plea of former judgment is a bar whenever the same question of right is renewed between the same parties by whatever form of the action." The doctrine has been adopted by the countries of the European continent which had modelled their civil law on the Roman pattern. The principle of preclusion of re-litigation, or conclusiveness of judgment, has struck deep roots in Anglo American Jurisprudence and is equally well known in the Commonwealth country which have drawn upon the rules of Common Law.

The spirit of the doctrine of res judicata is succinctly expressed in the well known common law maxim *debet bis vexari pro una et eadem causa* (no one ought to be twice vexed for one and the same cause). The principle has been recognized in all civilized societies. Lord Coke declared: "it has well been said *interest republicae ut sit finis litium* (interest of the state is that there should be limit of law suits), otherwise great oppression might be done under colour and pretence of law". As observed by the Privy Council in *Soorojomonee v Suddanund*[5], the rule has been enunciated in England.

[5] (1873) IA Supp 212 at p. 218 (PC).

The doctrine had long been recognized in India even prior to enactment of the Code of civil procedure 1859. At times, the rule worked harshly on individuals. For instants when the former decision obviously erroneous. But its working was justified on the great principle of public policy, which required that there must be an end to every litigation. The basis of the doctrine of res judicata is public interest and not absolute justice. The argument *ab inconvnienti* might be admissible if the meaning of statute is ambiguous or obscure, but if the language is clear and explicit, its consequences are for the Legislature and not for the Courts to consider. In that event, as was remarked by Coleridge, J. in *Garland v Carlisie*[6], "the suffering must appeal to the law-giver and not to the lawyer."

In the celebrated decision in *Sheoparsan Singh v. Rammandan Singh*[7]. Sir Lawrence Jenkins stated, “Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu Commentators”. Thus, from the common law, it got included in the Code of Civil Procedure, 1908 and which was later as a whole was adopted by the Indian legal system. From the Civil Procedure Code, the Administrative Law witnesses its applicability. Then, slowly but steadily the other acts and statutes also started to admit the concept of Res Judicata within its ambit.

CONCEPT OF RES JUDICATA

Res Judicata means “a thing decided” in Latin. It is a common law doctrine meant to bar re-litigation of cases between the same parties in Court. Once a final judgment has been handed down in a lawsuit subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one will apply res judicata to preserve the effect of the first judgment. This is to prevent injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources in the court system. Res judicata does not merely prevent future judgments from contradicting earlier ones, but also prevents them from multiplying judgments, so a prevailing plaintiff could not recover damages from the defendant twice for the same injury.

[6] 4 Cl&F 693at p. 705 (HL).
[7] AIR 1916 PC 78.

Res judicata includes two related concepts: claim preclusion, and issue preclusion (also called collateral estoppel), though sometimes res judicata is used more narrowly to mean only claim preclusion. Claim preclusion focuses on barring a suit from being brought again on a legal cause of action that has already been finally decided between the parties. Issue preclusion bars the re-litigation of factual issues that have already been necessarily determined by a judge or jury as part of an earlier claim. It is often difficult to determine which, if either, of these apply to later lawsuits that are seemingly related, because many causes of action can apply to the same factual situation and vice versa. The scope of an earlier judgment is probably the most difficult question that judges must resolve in applying res judicata. Sometimes merely part of a subsequent lawsuit will be affected, such as a single claim being struck from a complaint, or a single factual issue being removed from reconsideration in the new trial.

Nature of Res Judicata.

The Doctrine of Res Judicata strives to strike a balance between the two largely separated poles. One pit assures an efficient judicial system that renders final judgments with certainty and prevents the inequity of a defendant having to defend the same claim or issue of law repeatedly. On the other hand, it protects the plaintiff's interest in having issues and claims fully and fairly litigated.

A US Supreme Court Justice explained the need for this legal precept as follows:

> "Federal courts have traditionally adhered to the related doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion). Under Res Judicata, a final judgment on the merits of an action precludes the parties . . . from re-litigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first cause. As this court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on adjudication."

The basic point involved in the Nature of the doctrine of Res Judicata is that the doctrine tries to bring in natural and fair justice to the parties and that too by barring the other party to file a multiple number of suits either for justice or for harassing the other party.

Therefore, the nature of the doctrine of Res Judicata is to enable the Courts deliver the justice and then to dismiss or freeze the other active suits which are of the very same nature although is at different stage. Such a role enables the Court to dismiss the matter from its jurisdiction and also the jurisdiction of the other Courts which are at the same level.

Scope of Res Judicata.

The Scope of Res Judicata has very well been decided in the case of *Gulam Abbas v. State of U.P.*[8], where the code embodies the rules of conclusiveness as evidence or bars as a plea of an issue tried in an earlier suit founded on a plaint in which the matter is directly and substantially an issue becomes final. The scope of an earlier judgment is probably the most difficult question that judges must resolve in applying res judicata. Sometimes merely part of a subsequent lawsuit will be affected, such as a single claim being struck from a complaint, or a single factual issue being removed from reconsideration in the new trial.

The principle of Res Judicata has been held to be of wider application on the basis of the wider principle of the finality of decision by Courts of law and a decision under Section 12 of the U.P. Agriculturists Relief Act of 1934 was held to operate as Res Judicata Section 11 CPC which embodies the principle of Res Judicata has been held to be not exhaustive and even though a matter may not be directly covered by the provisions of that section the matter may still be Res Judicata on general principles.[9] The scope of the principle of Res Judicata is not confined to what is contained in Section 11 but is of more general application. Res Judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits.[10]

[8] (1982) 1 SCC 71 at p. 90-93.
[9] *Daryao v. State of U.P.*, AIR 1961 SC 1457.
[10] *Narayan Prabhu Venkateswara v. Narayan Prabhu Krishna*, (1997) 2 SCC 181.

In the case of *Satyadhyan Ghosal v. Smt. Deorajin Debi*[11], where the principle of Res Judicata is invoked in the case of the different stages of proceedings in the same suit the nature of the proceedings, the scope of the enquiry which the adjectival law provides for the decision being reached as well as the specific provision made on matters touching such decisions are some of the factors to be considered before the principle is held to be applicable.

OBJECT & IMPORTANCE OF RES JUDICATA

The doctrine of res judicata is based on three maxims:

- *Nemo debet bis vexari pro una et eadem causa* (no man should be punished twice for the same cause);
- *Interest reipublicae ut sit finis litium* (it is in the interest of the state that there should be an end to a litigation);
- *Res judicata pro veritate occipitur* (a judicial decision must be accepted as correct).

Thus, the doctrine of res judicata is the combined result of the public policy reflected in maxims (b) and (c) and private justice expressed in the maxim (a), and they apply to all judicial proceedings whether civil or criminal. But for this rule there would be no end to litigation and no security for any persons would be involved in endless confusion and great injustice done under the cover of law.[12]

As observed by Sir Lawrence Jenkins[13], the rule of res judicata, while founded on account of precedent, is dictated by a wisdom is for all times Referring to the opinion of the Judges expressed in 1776 in the *Duches of Kingston's Case*[14] to which reference has been invariably made in most of the cases by the Indian courts. It was said in that case: “From the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true : first the judgment of a Court of concurrent jurisdiction, directly upon the points, is as a plea, a bar, or as evidence conclusive, between the same parties, upon the same matter, directly in question

[11] AIR 1960 SC 941.
[12] *Daryao v. State of UP*, AIR 1961 SC 1457 at p. 1462.
[13] *Sheoparsan Singh v. Ramnandan singh*, (1915-16) 43 IA 91.
[14] 2 Smith's L.C. 13th edn. 644, 645.

in another Court; secondly that the judgment of a Court of exclusive jurisdiction, directly upon the point, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another Court, for a different purpose. But neither the judgment of a concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction, nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment."

In *Corpus Juris*[15], it has been stated, "Res Judicata is a rule of universal law pervading every well regulated system of jurisprudence and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the state that there should be an end to litigation; the other, the hardship to the individual that he should not be vexed twice for the same cause."[16]

In the case of *Lal Chand v. Radha Krishan*[17], it was said that the principle is founded on justice, equity and good conscience. Once a final judgment has been announced in a lawsuit, the subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one, they would apply the Res Judicata doctrine to preserve the effect of the first judgment. This is to prevent injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources and time of the Judicial System.

This shows the importance of the Doctrine of Res Judicata and thus, as per this, the same case cannot be taken up again either in the same or in the different Court of India. This is just to prevent them from multiplying judgments, so a prevailing plaintiff may not recover damages from the defendant twice for the same injury.

For making Res Judicata binding, several factors must be met up with:

- identity in the thing at suit;
- identity of the cause at suit;
- identity of the parties to the action;
- identity in the designation of the parties involved;
- whether the judgment was final;

[15] vol. 34 at p. 743.
[16] *Halsbury's Laws of England* (3rd ed.), Vol. 15 at p. 185.
[17] (1977) 2 SCC 88.

- whether the parties were given full and fair opportunity to be heard on the issue.

Regarding designation of the parties involved, a person may be involved in an action while filling a given office and may subsequently initiate the same action in a differing capacity. In that case Res Judicata would not be available as a defense unless the defendant could show that the differing designations were not legitimate and sufficient.

The general principle of *res judicata* is embodied in its different forms in three different Indian major statutes—Section 11 of the Code of Civil Procedure, *Section 300 of the Code of Criminal Procedure, 1973 and Sections 40 to 43 of the Indian Evidence Act*, yet it is not exhaustive. Here, we are concerned only with Section 11 of the Code of Civil Procedure.

RES JUDICATA AS DEFINED UNDER CODE OF CIVIL PROCEDURE, 1908

Section 11 of the Code of Civil Procedure embodies the doctrine of res judicata or the rule of conclusiveness of a judgement, as to the points decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. The doctrine has been explained in the simplest possible manner by Das Gupta, J. in the case of *Satyadhan Ghosal v. Deorjin Debi*[18] in the following words:

> "the principle of Res Judicata is based on the need of giving a finality to the judicial decisions. What it says is that once a res judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter- whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvas the matter again."

[18] AIR 1960 SC 941.

Section 11 of the Code of Civil Procedure, 1908 defines Res Judicata as: No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I: The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II: For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V: Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI: Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII: The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII: An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Section 11 contains the rule of conclusiveness of the judgment which does not affect the jurisdiction of the Court but operates as a par to the trial of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a Court, competent to try the subsequent suit in which such issue has been raised.

Here, the expression 'matter in issue' means the rights litigated between the parties, i.e., the facts on which the right is claimed and the law applicable to the determination of that issue. The term 'Directly' means directly, at once, immediately, without intervention. The term has been used in contradistinction to 'collaterally or incidentally', and the term 'substantially' means essentially, materially or in a substantial manner. It is something short of certainty but indeed more than mere suspicion. it means 'in effect though not in express terms'.[19] The question whether or not a matter is 'directly and substantially in issue' would depend upon whether a decision on such an issue would materially affect the decision of the suit. Also for the term 'Former suit', it is not the date on which the suit is filed that matters but the date on which the suit is decided; so that even if the suit was filed later, it will be a former suit if it has been decided earlier.

The term 'Party' means a person whose name appears on the record at the time of the decision. Also, here, persons other than parties would include privies, persons represented by parties, and the principle of Res Judicata would bind them too. The term 'same title' means same capacity.[20] Title refers to the capacity or interest of a party, that is to say, whether he sues or is sued for himself in his own interest or for himself as representing the interest of another or as representing the interest of others along with himself and it has nothing to do with the particular cause of action on which he sues or is sued. Litigating under the same title means that the demand should be of the same quality in the second suit as was in the first suit.

The expression 'competent to try' means 'competent to try the subsequent suit if brought at the time the first suit was brought'.[21] In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. The section 11 requires that there should be a final decision on which the court must have exercised its judicial mind. In other words, the expression 'heard and finally decided' means a matter on which the court has exercised its judicial mind and has after argument and consideration came to a decision on a contested matter. It is essential that it should have been heard and finally decided.[22]

[19] *Pandurang ramchandra v. Shantibai Ramchandra*, 1989 Supp (2) SCC 627 at p. 639.
[20] Per Broomfield, J. in *Mahadevappa Somappa v. Dharmappa Sanna*, AIR 1942 Bom 322 at p. 326.
[21] *Devendra kumar v. Pramuda Kanta*, AIR 1933 Cal 879.
[22] Kushal Pal v. Mohan Lal, (1976) I SCC 449 at p. 456-57.

The essential ingredients of Res Judicata are to be considered while deciding whether a particular judgment operated as res judicata or not be postulated as follows:

- Matter which was directly and substantially in issue in former suit must be directly and substantially issue in the subsequent suit also.
- Both the former and subsequent suit should have been between the parties or between the parties litigating under some titles.
- The former suit should have been decided by competent court which can try subsequent suit also.
- Any matter, which might and ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in each suit.

The onus of proof lies on the party relying on the theory of res judicata.

SECTION 11 OF CPC IS MANDATORY

The provisions of section 11 of the Code are mandatory and the ordinary litigant who claims under one of the parties to the former suit can only avoid its provisions by taking advantage of section 44 of the Indian Evidence Act which defines with precision the grounds of such evidence as fraud or collusion. It is not for the court to treat negligence or gross negligence as fraud or collusion unless fraud or collusion is the proper inference from facts. Where several defendants are there, in a suit the collusion of one of them alone is not enough to avoid the operation of rule of res judicata.

In *Beliram & Brothers and Others v. Chaudari Mohammed Afzal and Others*[23] it was held that where it is established that the minors suit was not brought by the guardian of the minors bona fide but was brought in collusion with the defendants and the suit was a fictitious suit, a decree obtained therein is one obtained by fraud and collusion within the meaning of section 44 of the Indian Evidence Act, and does not operate res judicata. The principle of res judicata in section 11 CPC is modified by section 44 of the Indian Evidence Act, and the principles will not apply if any of the three grounds mentioned in Section 44 exists.

General principles cannot be applied in a way making section 11 CPC nugatory. In *Sarla Bala Devi v. Shyam Prasad Chatterjee*, the Division Bench of Calcutta

[23] AIR 1948 PC 168.

High Court held: It is undoubtedly true that the principles of res judicata apply to proceedings other than suits including proceedings in execution. It must be taken as held by the Supreme Court that the principles of constructive res judicata are also applicable to execution proceedings. But the conditions of applicability of the principles of res judicata actual or constructive contained in section 11 CPC must be complied within such cases as far as possible. It is not the law that when a court applies the principles analogous to res judicata that court can override the conditions specified in section 11 CPC. In this case the majority of their Lordships of the supreme Court held that the provisions of section 11 CPC are not exhaustive with respect to an earlier decision operating as res judicata, any previous decision on a matter of controversy decided after full contest or after affording fair opportunity to the parties to prove their case by a court competent to decide it will operate as res judicata in a subsequent regular suit.

The general provisions of res judicata are wider than the provisions of section 11 CPC and also apply to cases not coming within the four corners of the section but if the case fails within the terms of section 11 CPC conditions of the section must be strictly complied with. The general principles of res judicata are applicable where the previous decisions has not been given in a civil suit though a plea of res judicata is raised in a subsequent civil suit but where both the proceedings are civil suits the general principles of res judicata have no application and the case must be confined to the four corners of section 11 CPC. The doctrine of res judicata is a doctrine of wide import and Section 11 of CPC is not exhaustive of it and there is high authority for the view that the principle of res judicata may apply apart from the limited provisions of CPC.

A decision in order to constitute res judicata need not necessarily have been given in a prior suit. Section 11 is not exhaustive of the circumstances in which the principles of res judicata may be applied but when a case falls within the purview of Section 11 CPC all the requirements are to be satisfied. But if the decision is given in a summary proceeding it does not operate as Res Judicata. Proceedings under section 84(2) Madras Hindu Religious Endowments Act, cannot be said to be summary proceedings even though there may be no right of appeal. The question of res judicata does not depend on the applicability of the decision, which is put forward as constituting res judicata. That question comes in incidentally to see if proceedings under section 84(2) is of a summary nature. The decision of the District Judge therefore, operates as Res Judicata in a subsequent proceedings between the same parties.

Though Section 11 of CPC is largely modified even then it is not exhaustive. The plea of res judicata still remains apart from the separate provisions of CPC. The statement of doctrine of res judicata contained in Section 11 of CPC is not exhaustive and there fore recourse may properly be had to the decisions of the English Courts for the purpose of ascertaining the general principles governing the application of the doctrine. The terms of section 11 are not to be regarded as exhaustive. The binding force of a judgement in probate proceedings depends upon the section 11 but upon the general principles of law. The rule of Res Judicata though may be traced to an English source it embodies a doctrine in no way opposed commentators. The application of the rule of res judicata therefore by the Courts in India should be included by no technical consideration of form but by matter of substance within the limit allowed by law.

Exceptions to Res Judicata.

However, there are limited exceptions to Res Judicata that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions - usually called collateral attacks - are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or competence to issue it. A collateral attack is more likely to be available (and to succeed) in judicial systems with multiple jurisdictions, such as under federal governments, or when a domestic court is asked to enforce or recognise the judgment of a foreign court.

In addition, in cases involving due process, cases that appear to be Res Judicata may be re-litigated. An instance would be the establishment of a right to counsel. People who have had their liberty taken away (that is, imprisoned) may be allowed to be re-tried with a counselor as a matter of fairness.

Constructive Res Judicata

The rule of direct res judicata is limited to a matter actuallu in issue alleged by one party and denied by other either expressly or impliedly. But constructive res judicata means that if a plea could have been taken by a party in a proceeding between him and his opponent, and if he fails to take that plea, he cannot be allowed to relitigate the same matter again upon that plea. In affect, the partly impliedly gives up the right to that plea by not pleading it in the previous suit. This principle is embodied in Explanation IV of Section 11.

In the case of *Kesar Das Rajan Singh v. Parma Nand Vishan Dass*[24], a peculiar situation arose. In this case the plaintiff had filed a suit on the basis of a promissory note. However, the plaintiff himself left the country and in subsequent proceedings since he was unable to provide the promissory note to his advocate in the foreign country the suit got dismissed. The plaintiff later on filed another suit in the local courts. The defendant took the plea that the present suit was barred by res judicata. The Court held that the judgment on the previous suit since it did not touch upon the merits of the case, therefore could not be held to be res judicata for the present suit.

APPLICABILITY OF DOCTRINE OF RES JUDICATA

Following conditions must be proved for giving effect to the principles of *res judicata* under Section 11— (i). that the parties are same or litigating under same title, (ii). that the matter directly and substantially in issue in the subsequent suit must be same which was directly and substantially in issue in the former suit, (iii). that the matter in issue has been finally decided earlier, and (iv). that the matter in issue was decided by a Court of competent jurisdiction.

If any one or more conditions are not proved, the principle of *res judicata* would not apply. Where all the four conditions are proved, the Court has no jurisdiction to try the suit thereafter as it becomes not maintainable and liable to be dismissed. For application of principle of *res judicata*, existence of decision finally deciding a right or a claim between parties is necessary.

Res Judicata in Public Interest Litigation

Public Interest Litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only "Public Interest". Public interest litigation or social action litigation is fought with the objective to make good the grievances of public at large. In *Forward Construction Co. v. Prabhat Mandal*[25], the Supreme Court was directly called upon to decide the question. The apex court held that the principle would apply to public interest litigation provided it was a bona fide litigation. In another case of

[24] AIR 1959 SC 163.
[25] AIR 1986 SC 391.

Ramdas Nayak v. Union of India[26], the court observed: It is a repetitive litigation on the very same issue coming up before the courts again and again in the grab of public interest litigation. It is high time to put an end to the same. Explanation VI[27] it cannot be disputed that Sec 11 applies to public interest litigation as well it must be proved that the previous litigation was the public interest litigation not by way of private grievance.

Res Judicata in Taxation Matters

It is said that a finding or an opinion recorded by an authority or even by a court of law for one assessment year has no binding effect on the issues in subsequent assessment years. Strictly speaking *res judicata* does not apply to income-tax proceedings. But each assessment being a suit, what is decided in one year may not apply in the following years but where a fundamental aspect permeating through the different assessment year has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be all appropriate to allow the position to be changed in a subsequent year[28]. In *Amalgamated Coalfields Ltd. Janapadha sabha*[29], the apex Court has said that each assessment year, being an independent unit, a decision for one year may not operate as *res judicata* in another year. But if a pure question of law, e.g. constitutional validity of a statute is decided, "it may not be easy to hold that the decision on this basic and material issue would not operate as *res judicata* against the assessee for a subsequent year."

Ex parte decree as Res Judicata

An ex parte decree, unless it is set aside, is a valid and enforceable decree. However, the real test for res judicata is whether the case was decided on merits. The real test for deciding whether the judgment has been given on merits or not is to see whether it was merely formally passed as a matter of course, or by way of penalty for any conduct of the defendant, or is based upon a consideration of the truth or falsity of the plaintiff's claim, notwithstanding the fact that the evidence was led by him in the absence of the defendant. Thus, a decree may not act as res judicata merely because it was passed ex parte.

[26] AIR 1995 Bom 235.
[27] Explanation VI.--Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.
[28] Radhasaomi Satsang Saomi Bagh, Agra Messrs v. Commissioner of Income-tax, AIR 1992 SC 1721.
[29] AIR 1968 SC 1013.

Res Judicata in Writ Petition

It has been settled since long that the Section 11 of the Code is not applicable, the general principle of *res judicata* may be made applicable in the judicial proceedings. It is settled principle of law that general principle of *res judicata* applies to writ petitions. However, a writ petition dismissed under Article 226 of the Constitution of India would not ordinarily bar filing of writ petition under Article 32 or an special leave petition under Art. 136. In the leading case of *Darayao v. State of UP*[30], the Supreme Court has exhaustively dealt with the question of applicability of the principle of res judicata in writ proceedings and laid down certain principles which may be summarized thus:

1. If a petition under Article 226 is considered on merits as a contested matter and is dismissed, the decision would continue to bind the parties unless it is otherwise modified or reversed in appeal or other appropriate proceedings permissible under the Constitution.
2. It would not be open to a party to ignore the said judgment and move the Supreme Court under Article 32 by an original petition made on the same facts an for obtaining the same or similar orders or writs.
3. If the petition under Article 226 in a High Court is dismissed not on merits but because of laches of the party applying for the writ or because it is held tha the party had an alternative remedy available to it the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32.
4. Such a dismissal may, however, constitute a bar to a subsequent application under Article 32 where and if the facts thus found by the High Court be themselves relevant even under Article 32.

It therefore, applies to civil suits, execution proceedings, arbitration proceedings, taxation matters, writ petitions, administrative orders, interim orders, criminal proceedings, etc.

DIFFERENCE BETWEEN RES JUDICATA AND RES SUB-JUDICE

Doctrine of Res Sub-Judice as dealt in Sec 10 of the Code of Civil procedure, deals with stay of civil suits. It provides that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously

[30] AIR 1961 SC 1457.

instituted suit between the same parties and that the court in which the previous suit is pending is competent to grant the relief claimed. Wheresas Doctrine of Res Judicata as dealt in Sec 11, on the other hand, relates to a matter already adjudicated upon. It bars the trial of a suit or an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit.

The object of the rule contained in section 10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief. The policy of law is to confine a plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief.[31] The object of this section is at outset different from that of Sec 11 i.e., of the Doctrine of Res Judicata, but ultimately the final object of both the doctrines, i.e., to reduce number and prevent duplicacy of litigations.

The doctrine of Res Sub-judice intends to protect a person from multiplicity of proceedings and to avoid a conflict of decisions. It also aims to avert inconvenience to the parties and gives effect to the rule of Res Judicata.[32]

The major difference between these two sections is that the Doctrine of Res Judicata under Sec.11 bars the institution of suit concerning same subject matter between same parties but the Doctrine of Res Sub judice under sec.10 does not bar the institution of a suit, but only bars a trial, if certain conditions are fulfilled. The subsequent suit, therefore, cannot be dismissed by a court, but is required to be stayed whereas in case of Res Judicata, the subsequent suit is liable to be dismissed.

CONCLUSION

The Doctrine of Res Judicata can be understood as something which restrains the either party to move the clock back during the pendency of the proceedings. The extent of Res Judicata is very-very wide and it includes a lot of things which even includes Public Interest Litigations. This doctrine is applicable even outside the Code of Civil Procedure and covers a lot of areas which are related to the society and people. The

[31] *Balkishan v. Kishan Lal*, ILR (1889) 11 All. 148 (FB).
[32] S. P. A. Annamalay Chetty v. B. A. Thornhill, AIR 1931 PC 263.

scope and the extend has widened with the passage of time and the Supreme Court has elongated the areas with its judgments.

Thus, the doctrine of Res Judicata enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. In the absence of such a rule there will be no end to litigation and the parties would be put to constant trouble, harassment and expenses. This doctrine of res judicata is a fundamental concept based on public policy and private interest. It is conceived in the larger public interest, which requires that every litigation must come to an end. It therefore, applies to civil suits, execution proceedings, arbitration proceedings, taxation matters, writ petitions, administrative orders, interim orders, criminal proceedings, etc. An ordinary litigation being a party or claiming under a party of a former suit cannot avoid the applicability of section 11 of CPC as it is mandatory except on the ground of fraud or collusion as the case may be.

Res Judicata does not restrict the appeals process, which is considered a linear extension of the same lawsuit as the suit travels up (and back down) the appellate court ladder. Appeals are considered the appropriate manner by which to challenge a judgment rather than trying to start a new trial. Once the appeals process is exhausted or waived, Res Judicata will apply even to a judgment that is contrary to law. There are limited exceptions to Res Judicata that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions usually called collateral attacks are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or on the competence of the earlier court to issue that decision.

Therefore, Res Judicata in a nut shell is a judicial concept wherein the Courts do not allow a petition to be filed in the same or to the other Court for the doctrine of Res Judicata would apply and the party would not be allowed to file the petition or to continue the petition (as the case may be).

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